

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 PUGET SOUND BY-PRODUCTS COMPANY)
5 DIVISION OF DARLING-DELAWARE Co., Inc.,)
 Appellant,)
6 v.)
7 PUGET SOUND AIR POLLUTION)
8 CONTROL AGENCY,)
 Respondent.)
9 _____

PCHB No. 1067

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

10 This matter, the appeal of a \$250 civil penalty for allegedly
11 causing or permitting the emission of excessive odor in violation of
12 respondent's Regulation I, came before the Pollution Control Hearings
13 Board, Art Brown and Chris Smith, at a formal hearing held in Tacoma,
14 Washington, on December 10, 1976. Hearing examiner William A. Harrison
15 presided.

16 Appellant appeared by its General Manager, Walter B. Nicholson;
17 respondent appeared by and through its attorney, Keith D. McGoffin.
18 Gene Barker, Olympia court reporter, supervised recording of the

1 | proceedings.

2 | Having heard the testimony, examined the exhibits and being fully
3 | advised, the Board makes the following

4 | FINDINGS OF FACT

5 | I

6 | Pursuant to RCW 43.21B.260, respondent has filed a certified
7 | copy of its Regulation I and amendments thereto, which we notice.

8 | II

9 | At all times relevant to this appeal, the appellant, Puget Sound
10 | By-Products ("Puget") owned and operated a rendering plant at 1640
11 | Lincoln Avenue in an industrial area of Tacoma, Washington. The purpose
12 | of Puget's rendering business is to convert the otherwise waste-parts
13 | of fallen animals into useable products. This is done by heating the
14 | waste-parts in a process whereby the raw material is added to the
15 | cookers continuously. In normal use, this "continuous process" of
16 | rendering does not produce excessive odor.

17 | III

18 | On the morning of July 21, 1976, the respondent, Puget Sound Air
19 | Pollution Control Agency (PSAPCA), received a telephoned complaint
20 | from a business located in the vicinity of Puget's rendering plant.
21 | Two officials of that business, located one-half mile from Puget's
22 | rendering plant, appeared at this hearing to testify. One testified
23 | that the odor would have made him vomit were he working outside his
24 | building rather than in it. The second testified to a "strong
25 | offensive odor." We find as fact the description of the odor as
26 | sworn to by these witnesses.

27 | FINAL FINDINGS OF FACT,
 | CONCLUSIONS OF LAW AND ORDER

1 IV

2 In response to the above complaint received on the morning of
3 July 21, 1976, PSAPCA dispatched two of its inspectors to
4 investigate. These inspectors were aware of two rendering
5 plants in the vicinity of the complainants' business. The inspectors
6 first placed themselves between the complainants' business and a nearby
7 rendering plant operated by another concern. They sensed no unusual
8 odors. Next, the PSAPCA inspectors drew near the Puget rendering plant.
9 Both inspectors smelled odors emanating from Puget's plant. One testified
10 at hearing that a person would want to avoid the odor completely.
11 The other testified that it was "repugnant." In addition, both
12 inspectors agreed that if odors were rated from one (no odor) to
13 five (worst odor), the odors from Puget's plant which they smelled at
14 9:00 AM on July 21, 1976, would rate number four. We find as fact
15 the description of the odor as sworn to by these witnesses. We further
16 find that such odor emanated from Puget's rendering plant.

17 V

18 The odor which emanated from Puget's rendering plant resulted from
19 the breakdown of the plant's boilers which in turn caused the buildup
20 of animal waste-parts or "raw materials" which continued to be
21 delivered to the plant.

22 VI

23 The appellant, Puget, has no prior record of odor violation of
24 respondent's Regulation I.

25 VII

26 Any Conclusion of Law hereinafter recited which should be deemed
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 3

1 a Finding of Fact is hereby adopted as such.

2 From these Findings, the Pollution Control Hearings Board makes
3 these

4 CONCLUSIONS OF LAW

5 I

6 The Hearings Board has jurisdiction over the persons and the
7 subject matter of this appeal.

8 II

9 A severe and objectionable odor was caused or permitted by
10 appellant on July 21, 1976. This odor was an air contaminant that
11 caused "detriment to the health, safety or welfare" of persons and
12 was in violation of Section 9.11 of respondent's Regulation I. The
13 \$250 civil penalty was properly assessed, is reasonable in amount and
14 should be affirmed.

15 III

16 The appellant had available to it, but did not take advantage
17 of, the relief of Section 9.16 of respondent's Regulation I which
18 would have prevented its odor from being deemed a violation, if
19 it was caused by unforeseeable breakdown, and if the respondent was
20 promptly and properly notified.

21 IV

22 Any Finding of Fact which should be deemed a Conclusion of Law
23 is hereby adopted as such.

24 Therefore, the Pollution Control Hearings Board issues this

25 ORDER

26 The \$250 civil penalty is affirmed, provided however, that \$125

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER 4

1 of the civil penalty is suspended on condition that appellant not violate
2 respondent's regulations for a period of one year after this Order
3 becomes final.

4 DONE at Lacey, Washington this 18th day of January, 1977.
5 POLLUTION CONTROL HEARINGS BOARD

6
7 Art Brown
8 ART BROWN, Chairman

9 Chris Smith
10 CHRIS SMITH, Member

11
12 (Did not participate)
13 W. A. GISSBERG, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER 5